APPENDIX "A"

UNITED STATES CIVIL SERVICE COMMISSION
BOARD OF APPEALS AND REVIEW
Washington D.C. 20415

DECISION

IN THE MATTER OF)
Mr. Howard W. Waite) TYPE CASE:
CSA-1 162 441) Service Credit)

INTRODUCTION

The appellant has appealed from the decision of the Bureau of Retirement, Insurance, and Occupational Health that his employment in Guam under Navy Contracts NOy 13931 and NOy 13626 during the period of May 23, 1947, through February 28, 1950, is not creditable for Civil Service retirement purposes.

STATEMENT OF THE CASE

The appellant was last employed by the Department of Interior, Government of the Trust Territory, Saipan, Mariana Islands. His employment was terminated on April 18, 1968, by resignation (reduction in force). On the basis of 17 years and 2 months of creditable service, he was entitled to an annuity at age 62, which commenced August 11, 1969.

The official records show that the

appellant received an excepted appointment on March 1, 1950, as Engineer, GS-13, Officer-In-Charge of Construction, NOy Contracts, Guam, M. I. He seeks retirement credit for prior service performed between May 23, 1947, and February 28, 1950, when he was on the employment rolls of private contractors. In this connection in 1958 the Department of the Navy, Area Public Works Office Marianas, the appellant's employing agency, requested a ruling as to the creditability of the service in question. The agency stated that the appellant originally came to Guam as an Assistant Office Engineer (OICC) on May 23, 1947, with Brown-Pacific-Maxon, Contract NOy 13931, an on September 29, 1947, transferred to Blanchard and Maher, Frederic R. Harris, Keller and Gannon, Contracts NOy 13626, and the agency furnished copies of the employment contracts.

The Bureau advised the agency that the service as an employee of a contractor was not creditable.

In response to subsequent correspondence, the Bureau, by letter of January 30, 1963, advised the appellant

(who had asserted that his employment in May 1947 was through a CPFF contractor) that service performed by certain employees of the Navy Department paid on contractors' payrolls may be credited provided appointment by a Navy officer and assignment to duty on Navy work under a Navy officer was fully and completely documented. Under date of April 3, 1969, the Bureau advised Mr. Robert F. Kanost, Personnel Officer, Department of Interior, Trust Territory of the Pacific Islands, in which agency the appellant was then employed, that the Bureau had reviewed the statements furnished on behalf of the appellant but did not find that the fact of a federal appointment had been established; and had also reviewed the previously furnished contracts of employment and that they clearly indicated that the appellant was employed by the officers of the companies involved to fulfill Navy contracts under which companies were obligated to supply engineering personnel for duty with the Navy Department.

In letter of October 21, 1969, the appellant contended that he was recruited for the position by a government employee

and appointed by a federal officer and employed by another. In support thereof, he related that while inquiring about overseas employment in the offices of Brown-Pacific-Maxon in Los Angeles he was introduced to a Mr. John Willard, visiting personnel officer from the Navy's Office-in-Charge of Construction on Guam, and before being employed, he was further interviewed by Commander J. W. Gordanier, the Resident-Officer-in-Charge of Construction. The appellant stated that it was only after Commander Gordanier was satisfied that he could fill the position of Assistant Office Engineer on the staff of the OIC NOy 13931 was he sent to the San Francisco office of the contractor where he was signed on May 23, 1947, solely for transportation and pay purposes. Again copies of previously submitted statements from Captain Hansen and Theodore R. Shaid were presented. In reply of January 23, 1970, the Bureau reiterated that the statements did not establish the fact of a federal appointment, and that the fact he was hired to fill a specific position did not constitute an appointment or employment

by a federal officer.

REPRESENTATIONS TO THE BAR

On Appeal, the appellant contends that the contracts of employment were entered into solely for the convenience of the government, and in addition to the already mentioned statements, has furnished a statement from Captain Gordanier.

ANALYSIS AND FINDINGS

Civil service retirement credit for contract service depends on whether it meets the three tests of Federal employment. In this connection, in addition to the requirements that a person be engaged in the performance of federal functions under authority of an Act of Congress or Executive Order and be under the supervision and direction of a federal officer, there must be an affirmative showing that an appointing officer of a government department hired the person and placed him on the payroll of a contractor, rather than on the rolls of the government department, for the convenience of the government. Full and complete documentation of these elements is required.

The Board of Appeals and Review had

made a thorough study of the record in the appellant's case and has given careful consideration to his representations and evidence in support of his request that he be granted retirement credit for the service in question. The only documentation of the appellant's employment consists of the contracts of employment he entered into with the private contractors. The appellant's representations and the statements furnished on his behalf indicate that a federal officer authorized the contractor to employ the appellant to fill a particular position. "Authorization" does not satisfy the requirement that a person be appointed The Board finds as did the Bureau of Retirement, Insurance, and Occupational Health that the evidence does not establish that the Department of Navy appointed the appellant and then assigned him to the payrolls of the contractor for the convenience of the government during the period in question

DECISION

For the foregoing reason, the decision of the Bureau of Retirement,

Insurance, and Occupational Health denying retirement credit for contract service in this case is affirmed by the Board.

For the Commissioners

William P. Berzak
Chairman

July 22, 1970

APPENDIX "B"

IN THE UNITED STATES COURT OF CLAIMS

No. 470-81C

HOWARD WAITE)
v.)
THE UNITED STATES)

(Dated March 2, 1982)

ORDER

The plaintiff in this civilian pay case, a retired employee, contends that he is entitled to greater retirement pay than he has received because in calculating that pay the government failed to give him credit for two periods of federal service. He seeks the additional retirement pay that he contends he should have recieved and also payment for sick leave he forfeited upon retiring. The government has moved to dismiss on various grounds, including the bar of the statute of limitations.

We agree with the government that the claims based upon the failure to give the plaintiff credit for two periods of federal service are time-barred. We hold that the claim for unused sick leave does not state a valid claim for relief. Accordingly, we dismiss the

petition.

I.

The plaintiff retired from the federal service in August 1969. His annuity was computed on the basis of 17 years and 2 months of service. The plaintiff contends that his total service should have been 21 years and 10 months. The basis of this claim is that he also should have been credited for service between May 1947 and March 1950, and between June 1963 and March 1965. The Civil Service Commission denied the plaintiff credit for these two periods because it could not conclude that the plaintiff then was a federal employee.

Between 1947 and 1950, the plaintiff worked on Guam pursuant to an employment contract with a private firm. His employment was handled that was because when the Navy hired him in 1947, there were no procedures established on Guam for federal hiring of civilian employees. The gap in service between 1963 and 1965 covers a period between the termination of plaintiff's employment on American Samoa and his resumption of work on Saipan.

The plaintiff appealed the denial of

credit for 1947-50 to the Civil Service Commission, which in 1970 denied the appeal because of the lack of adequate documentation that the plaintiff was a federal employee during that period. The plaintiff's appeal did not challenge the denial of credit for the period 1963-65.

The plaintiff also seeks payment of unused sick leave, which he forfeited upon retirement. He points out that because of a change in the law, he would have received credit for the unused sick leave in calculating his annuity if he had delayed his retirement for approximately 3 months. He contends that the government should have informed him of that possibility.

II.

A. Section 2501 of Title 28 of the United States Code bars any claim within our jurisdiction unless the petition is filed within 6 years "after such claim first accrues". 28 U.S.C. Section 2501 (1976). "A claim against the United States first accrues on the date when all the events have occurred which fix the liability of the Government and entitle the claimant to institute an action".

Oceanic Stemship co. v. United States, 165 Ct. Cl. 217, 225 (1964).

In the present case, all the events that fixed the liability of the United States occurred in 1969 and 1970 when, in calculating the plaintiff's annuity, the government excluded the plaintiff's service for the 1947-50 and 1963-65 periods, and did not give the plaintiff any credit for his unused sick leave. The plaintiff could have brought suit upon the claims at that time, and certainly after the Civil Service Commission denied his appeal in 1970.

The present suit, filed in July 1981, was initiated more than 10 years after the plaintiff's claims accrued. Section 2501 bars it as untimely. The fact that after 1970 the plaintiff wrote letters and submitted documentation to the Civil Service Commission in an attempt to persuade that agency to change its decision did not toll the statute. See Friedman v. United States, 159 Ct. Cl. 1, 24-25, 310 F.2d 381, 396 (1962), cert. denied, 373 U.S. 932 (1963).

B. The plaintiff argues, however, that under the "continuing claim"

exception to the statute of limitations, his claims are timely with respect to the additional amounts he asserts he should have recieved for the 6 years preceding the filing of his petition. We explained the narrow scope of that doctrine in Roberts v. United States, 151 Ct. Cl. 360, 363 (1960), and we pointed out that

> the purpose of the statute of limitations is not defeated or undermined in entertaining claims, the operative facts of which first occurred over six years ago, as long as the facts necessary to a determination of those claims are before us with certainty and not obscured by the dust of years.

We stated that the continuing claim exception properly applies where "there are no uncertain, undiscovered, or disputed facts" and the "resolution [of the case] depends only on an interpretation of the law and regulations as they existed at the time of plaintiff's retirement which are readily available to the court and the parties". Id.

Except for the claim relating to

unused sick leave, the plaintiff's claims do not come within the continuing claim exception. There are disputed questions of fact relating to the plaintiff's status during both periods for which the plaintiff was not given credit. They involve such issues as the authority of the naval officer who appointed the plaintiff in Guam in 1947 to place him in the civil service, the nature of his employment between 1947 and 1950 under his contract with the private contractor, and the duties, if any, he performed during the period 1963-65.

The answers to these questions depend upon the resolution of factual issues, the evidence on which goes back 35 years for the claim for the first period and almost 20 years for the second claim. These are precisely the kind of stale claims the statute of limitations was intended to bar and the continuing claim exception is inapplicable.

The claim based upon unused sick leave stands on a different footing. Although that claim is more than 30 years old, it involves no factual issues but

only a legal question.

The plaintiff, however, loses on the legal issue. At the time the plaintiff retired, the pertinent statutes and regulations did not provide either compensation or credit upon retirement for unused sick leave. Burich v. United States, 177 Ct. Cl. 139, 150, 366 F.2d 984, 990-91 (1966), cert denied, 389 U.S. 885 (1967). The fact that, approximately 3 months after the plaintiff retired, a new statute and regulations became effective that give credit for unused sick leave in calculating annuities does not entitle the plaintiff to additional compensation. The plaintiff's annuity properly was determined according to the law on the date of his retirement. The government was not required to advise the plaintiff that if he postponed his retirement his annuity would be increased to reflect unused sick leave. Nordstrom v. United States, 169 Ct. Cl. 632, 638, 342 F.2d 55, 59 (1965). The plaintiff has not stated a valid claim for recovery with regard to unused sick leave.

The defendant's motion to dismiss is granted, and the petition is dismissed.

BY THE COURT

Daniel M. Friedman
Chief Judge

APPENDIX "C"

Box 144
Inverness, CA 94937
October 21, 1969

Mr. Soloman Papperman, Chief
Legislative and Policy Division
Bureau of Retirement, Insurance and
Occupational Health
United States Civil Service Commission
Washington, D. C. 20415

Dear Mr. Papperman:

Thank you for your letter of October 9, 1969, enclosing the evidence of my early government service. I have made copies for my records and am returning the documents together with the following information:

1. While inquiring about overseas employment in the offices of Brown-Pacific-Maxon in Los Angeles, I was introduced to a Mr. John Willard, visiting Personnel Officer from the Navy's Office-in-Charge of Construction on Guam. Mr. Willard's sole job was to recruit personnel for the Navy and not for either the construction contractor (NOy 13931) or for the design contractor (NOy 13626).

2. Before being employed, I was

further interviewed by Cdr. D. W. Gordanier, then Resident-Officer-in-Charge of Construction (Contracts NOy 13931 and NOy 13626), whose offices were then in the Ferry Building, San Francisco. Only after Cdr. Gordanier was satisfied I could fill the position of Assistant Office Engineer on the staff of the OICC NOy 13931, (then Capt. Eigel L. Hansen), was I sent to the San Francisco office of Brown-Pacific-Maxon where I signed on May 23, 1947, their "contract" solely for transportation and pay purposes. I was recruited by a government employee (Mr. Willard), appointed by a federal officer (Cdr. Gordanier), and employed by another (Cdr. George Emery, CEC USN, who was directly under Capt. Hansen).

I hope the foregoing will explain the significance of the contracts, copies of which I had previously furnished for the purpose of establishing dates of initial employment for tenure purposes. In those early post war years the machinery of the Civil Service Department was inadequate for the intensive personnel demands of the government's

overseas programs. I know from rulings made under identical circumsances that my service from May 23, 1947, to March 1, 1950, is creditable. There is only the matter of furnishing sufficient documentation. Will you please advise me if further evidence or testimony is required.

Sincerely,
Howard W. Waite

Enclosure

APPENDIX "D"

Box 144
Inverness, CA 94937
January 5, 1970

Ref: CS - 162 441
528-24-0850
081107-06

Civil Service Bureau of Retirement
and Insurance
Washington, D.C. 20415

Gentlemen:

Please send me a copy of the computations used to determine my retirement annuity. I would also appreciate an opinion as to what my annuity would be had I applied for retirement after November 1, 1969, rather than of August 11, 1969.

Very truly yours,

Howard W. Waite

APPENDIX "E"

January 23, 1970

Mr. Howard W. Waite
Box 144
Iverness, CA 94937

Dear Mr. Waite:

This is in reply to your letter regarding retirement credit for service performed by you under Contract NOy 13931 and Contract NOy 13626.

We have given careful consideration to the statements submitted but do not see that the fact of a Federal appointment has been established. The contracts of employment previously furnished in your case indicate you originally went to Guam as an Assistant Office Engineer (OICC) on May 23, 1947, with Brown-pacific-Maxon, Contract NOy 13931 and on September 29, 1947, transferred to Blanchard and Maher, Frederick R. Harris, Inc., Keller and Gannon, Contract NOy 13626. You were continually so employed until March 1, 1950, at which time you were transferred to the civil service rolls as an Engineer, GS-13.

The contracts clearly indicate that

you were employed by the officers of the companies involved to fulfill Navy contracts under which the companies were obligated to supply engineering personnel for duty with the Department of the Navy. The fact that you were hired to fill a specific position does not constitute an appointment or employment by a Federal officer.

Since you were an employee of the contractors referred to in the contracts of employment from May 23, 1947, to March 1, 1950, retirement credit for the period in question may not be allowed.

If you believe that this action is not proper, you are, under the Commission's regulations, allowed six months from the date of this letter within which to enter an appeal. You may submit with your appeal any additional evidence which you think might support your appeal. A copy of the "Retirement Appeals Procedure" is enclosed for your information.

Sincerely yours,
Solomon Papperman, Chief
Legislative and Policy
Division

Enclosure

APPENDIX "F"

Box 144
Inverness, CA 94937
February 20, 1970

United States Civil Service Commission,
Board of Appeals
Washington, D.C. 20415

Gentlemen:

I am appealing the disallowance of my employment by the Officer in Charge of Construction, Guam from May 23, 1947 to March 1, 1950, as creditable for retirement purposes. The "contracts of employment" referred to in Enclosure 1 were entered into solely for the convenience of the Government, there being no organization in those early days following World War II whereby a Federal Officer, such as the Officer in Charge of Construction at an overseas office, could transport and place on his payroll an employee otherwise recruited as a civil servant. Note that Enclosure 2 certifies that I was personally recruited at the direction of the Officer in Charge of Construction, NOy 13931; and Enclosure 3 certifies that I was employed on the OICC staff. Enclosures 2 and 3 were available

prior to the disallowance of Enclosure 1. The Enclosure 4 certification was recently obtained from the Federal Officer who was the Resident Officer in Charge of Construction at the time in question. If further certification is needed to show that I was in fact specifically appointed by a Federal Officer, please so advise.

I claim credit for retirement purposes for my employment from May 23, 1947, to March 1, 1950.

Sincereley,
Howard W. Waite

Enclosures

APPENDIX "G"

Box 144
Inverness, CA 94937
September 4, 1970

United States Civil Service Commission
Board of Appeals and Review
Washington, D. C. 20415

Reference: CSA 1 162 441

Gentlemen:

For the following reasons I hereby reappeal for the service credit described in my letter of February 20, 1970:

1. The previous decision of the Bureau of Retirement, Insurance, and Occupational Health affirmed by your Board on July 22, 1970, contained the statement, "The fact that you were hired to fill a specific position does not consitute an appointment or employment by a Federal officer". Although no such requirement for creditable service was made by the Department of the Navy, Bureau of Yards and Docks when I made a pre-retirement inquiry many years ago, I proceeded to obtain what I understood to be adequate certification of the

"appointment or employment" requirement. Hence the certification I was " . . . recruited and employed by the Officer-in-Charge of Construction, NOy 13931 . . . ", submitted as Enclosure 4 in my February 20, 1970, appeal and resubmitted herewith as Enclosure 2.

2. Sometime after submitting my February 20, 1970, appeal, I was advised (by an ex fellow-employee whose similar service has been credited for retirement purposes), that the word "appoint" had more significance than the word "employed". I therefore obtained the statement from my appointing officer, Enclosure 3, but had no opportunity to submit this additional documentation before receipt of your decision of July 22, 1970.

In view of the added evidence (Enclosure 3) in my case, I hereby request a reversal of the Board's finding based on previous evidence, and claim credit for retirement purposes for my employment from May 23, 1947, to March 1, 1950.

Respectfully,
Howard W. Waite

Encl. 3

APPENDIX "H"

January 15, 1971

Mr. Howard W. Waite
Box 144
Inverness, CA 94937

Dear Mr. Waite:

This is in further response to your letter of September 4, 1970, requesting that the Civil Service Commisison reopen and reconsider your case which was decided by the Commission's Board of Appeals and Review on August 11, 1970.

Decisions of the Commission's Board of Appeals and Review are final administrative decisions of the Civil Service Commission, from which there is no further right of appeal. However,, it has been provided by regulation that the Commissioners may, in their discretion, reopen and reconsider any previous decision when the party requesting reopening submits written argument or evidence which tends to establish that:

(a) New and material evidence is available that was not readily available when the previous decision was issued;

(b) The previous decision involves an erroneous interpretation of law or

regulation or a misapplication of established policy; or

(c) The previous decision is of a precedential nature involving a new or unreviewed policy consideration that may have effects beyond the actual case at hand, or is otherwise of such an exceptional nature as to merit the personal attention of the Commissioners.

We have carefully considered the information in your submission, including the statements of J. W. Gordanier, Captain, CEC, United States Navy, dated February 17, and June 30, 1970. These statements are not considered to represent new material evidence, not previously available, that your employment from May 23, 1947, to February 28, 1950, with Brown-Pacific-Maxon, and with Blanchard and Maher, Frederick R. Harris, Inc., and Keller and Gannon, constituted Government employment. As you point out, Captain Gordanier's latest statement is substantially the same as his prior statement except for a slight change in terminology. It is not satisfactory documentation that you were appointed as a Federal employee and placed on the rolls of the contractor for

the convenience of the Government.

In view of the above, and in the absence of any new evidence indicating probable error in the previous decision of the Board of Appeals and Review, the request to reopen this case must be, and is, denied.

I regret that I cannot furnish you a more favorable reply.

Sincerely yours,
Robert B. Bates
Assistant to the
Commissioners (Appeals)

APPENDIX "I"

1 April 1971

U. S. Civil Service Commission
Bureau of Retirement, Insurance
and Occupational Health
Washington, D. C. 20415

Gentlemen:

The following statement regarding employment of Mr. Howard W. Waite, DOB 11 August 1971, is furnished in support of subject's claim to establish eligibility for service credit for retirement.

Records and information available to this command indicate that on or about 23 May 1947, Mr. Waite was appointed by a Naval officer to perform work under U. S. Navy supervision. Contracts of employment which Mr. Waite entered into with Contractor NOy 13931, and later with contractor NOy 13626 on 29 September 1947, were effected for the convenience of the government to facilitate Mr. Waite being carried on the contractor's rolls for pay purposes only. Mr. Waite was continuously employed under the supervision of U. S. Navy officials until 1 March 1950, when he was converted to Civil Service status.

Favorable consideration of Mr.

Waite's request to credit the above period for retirement purposes is requested.

H. DAUBER
Personnel Services
Officer (Acting)

APPENDIX "J"

Box 144
Inverness, CA 94937
April 18, 1971

Re: CSA-1-162-441

United States Civil Service Commission
Washington, D. C. 20415

Gentlemen:

The attached statement from the Department of the Navy is submitted as new and material evidence not readily available at the time of your denial decision of January 15, 1971. If further documentation is required to establish the fact that my service with the United States Navy from May 23, 1947, to February 28, 1950, constituted government employment. Please advise and I will endeavor to furnish same.

Sincerely,
Howard W. Waite

Enclosure

APPENDIX "K"

10430 Greenview Drive
Oakland, CA 94605
March 6, 1972

Retirement Division
United States Civil Service Commission
Washington, D. C.

Gentlemen:

Re: Mr. Howard W. Waite
Box 144
Inverness, CA 94937

This letter is written in the interest of bringing to your attention what I consider an injustice on the application of the retirement pay of Mr. Waite, due in my opinion to an administrative error by the Personnel Department of the District Public Works Office, 14 N. D., Pearl Harbor.

Howard W. Waite was transferred from District Public Works Office, 8th Naval District to DPWO, 14th Naval District, on or about July 1, 1962, for the purpose of filling an engineering position in america Samoa under the then Governor Rex Lee. The intention was he be placed on the DPWO-14ND rolls to maintain his Civil Service employment tenure while on loan in Samoa as the then Samoan government

did not come under U. S. Civil Service employment regulations. Until mid-June 1962, I was the Officer in Charge of the DPWO-14ND office at which time I was transferred to Washington, D.C. I had interviewed Mr. Waite previously in San Francisco and explained how his employment would be handled. Soon after my departure, Mr. Waite reported to DPWO-14ND whicch was in a rather confused situation due to the disestablishment of that office and the personnel and functions being assumed by the Director, Pacific Division, Bureau of Yards and Docks, Pearl Harbor. At this point, it is understood this Command encountered personnel ceiling problems and through an administrative error Mr. Waite was changed to the category of an "excepted appointment" from "permanent appointment". This action resulted in a break in service as after about one year service in Samoa he later accepted a permanent Civil Service appointment with the Trust Territory Government in Saipan. Due to this break in service, he has suffered a loss in retirement benefits. I feel the Civil Service Commission should take the necessary action to

correct the obvious error and adjust the records accordingly.

Mr. Waite served the various Federal Agencies loyally and faithfully for over 22 years and I feel an injustice has been done because of an inadvertent administrative error.

The above outlined situation recently came to my attention since my recent retirement from the U. S. Navy.

Sincerely yours,
Norman M. Martinsen
Captain, Civil Engineer
Corps, USN (Retired)

APPENDIX "L"

March 16, 1972

Howard W. Waite
Box 144
Inverness, CA 94937

Dear Mr. Waite:

Reference is made to your Civil Service annuity and to your request for retirement credit for your service from May 23, 1947, through February 28, 1950, when you were on the employment rolls of private contractors.

Service performed while on a contractor's Cost-Plus-A-Fixed-Fee payroll has been ruled to be creditable for retirement purposes if it is shown that the individual received a Federal appointment and was placed on the contractor's payroll for the convenience of the Government. The fundamental question for consideration in determining creditability of this type of service is whether an employer-employee relationship existed between the Federal government and the employee, i. e. whether the employee met the tests as a Federal employee.

To be considered a Federal employee

a person must be:

(1) Engaged in the performance of Federal functions under authority of an Act of Congress or Executive Order;

(2) Appointed or employed by a Federal Officer in his official capacity as such; and

(3) Under the supervision and direction of a Federal officer.

In order to give further consideration to your request for credit for the service from May 23, 1947, through February 28, 1950, it will be necessary for you to submit three statements in affidavit form attessting to the fact that you were a Federal employee during the period in question. One of the affidavits about your employment must be from you personally. One of the other two affidavits must be from the Resident Officer in Charge, the Area Officer in Charge of construction, or some other Federal Officer having knowledge that you were Federally appointed.

An affidavit is a statement of facts

confirmed by the oath of the party making it, taken before an officer having authority to administer such oath.

Sincerely yours,
W. L. Schlappi
Chief of Section

APPENDIX "M"

March 21, 1972
Reference: RCZ:NO:1b
CSA 1 162 441

Mr. W. L. Schlappi, Chief of Section
United States Civil Service Commission
Bureau of Retirement, Insurance, and
Occupational Health
Washington, D. C. 20415

Dear Mr. Schlappi:

In response to your letter of March 16, 1972, there are attached three affidavits as follows:

1. Statement from me swearing to the nature of my employment between May 23, 1947, and February 28, 1950. (See attachment No. 4 for identification of my immediate supervisor as a Federal Officer.)

2. A statement by Capt. Eigel L. Hansen, the Officer in Charge of Construction of Cost-Plus-Fixed-Fee Contracts NOy 13931 and 13626 during the time of my above-mentioned service.

3. Statement from Capt. J. W. Gordanier, the ROICC for name contracts and time period.

Sincereley,
Howard W. Waite
Box 144
Inverness, CA 94937

4 attachments

APPENDIX "N"

April 5, 1972

Howard W. Waite
Box 144
Inverness, CA 94937

Dear Mr. Waite:

We have your letter of March 21, 1972, along with an affidavit from you and from Eigil L. Hansen concerning your contract service from 1947 to 1950.

We are returning the statement from J. W. Gordanier. Please advise Mr. Gordanier that his statement must also be sworn to before a notary. The notary's certification must appear on the statement.

Sincerely yours,
W. L. Schlappi
Chief of Section

APPENDIX "O"

Box 144
Inverness, CA 94937
August 25, 1972

United States Civil Service Commission
Bureau of Retirement, Insurance and
Occupational Health
Washington, D. C. 20415

Reference: RCZ:NO:1b
CSA 1 162 441

Attn: Mr. W. L. Schlappi

Dear Mr. Schlappi:

Please advise when I might expect action pursuant to my letter of May 3, 1972, in reply to yours of April 5, 1972, and prior correspondence. Also, please send me a copy of the detailed accounting, including dates and salary from which my retirement annuity was calculated.

Very truly yours,
Howard W. Waite

APPENDIX "P"

Box 144
Inverness, CA 94937
November 16, 1972

United States Civil Service Commission
Bureau of Retirement, Insurance, and
Occupational Health
Washington, D. C. 20415

Attn: Mr. W. L. Schlappi

Dear Mr. Schlappi:

Please advise me whether the decision that the sworn statements from Captains Gordanier and Hansen, submitted pursuant to your request of March 16, 1972, do not specifically show that I was appointed or employed by a Federal Officer in his official capacity as such and was under the supervision and direction of a Federal Officer, is yours, as Chief of Section, or is an official decision of the Civil Service Commission.

Also, please send me, or advise me from whom I should request, a copy of the accounting, requested in my letter of August 25, 1972.

Sincerely,
Howard W. Waite

APPENDIX "Q"

July 10, 1973

Howard W. Waite
Box 144
Inverness, CA 93947

Dear Mr. Waite:

I have your letter of June 14 with enclosure.

As indicated in previous correspondence, the secondary evidence required to establish creditability of service performed on a contractor's payrolls must be based on official documents or personal knowledge and conclusively show (1) the periods of employment, and (2) that the service met the three tests of Federal employment.

The affidavits you submitted from Captains Hansen and Gordanier do not specifically show that you were appointed or employed by a Federal officer in his official capacity as such and that you were under the supervision and direction of a Federal officer. The affidavits were substantially the same as those previously submitted and do not furnish any new evidence to show you met the three criteria of Federal employment.

Any additional new evidence you wish to submit will be carefully considered in connection with your claim; however, there is no authority to consider your "contractor" service as Federal employment on the basis of the information now available.

Sincerely yours,
W. L. Schlappi
Chief of Section

APPENDIX "R"

Box 144
Inverness, CA 94937
January 6, 1974

Civil Service Bureau of Retirement
and Insurance
Washington, D. C. 20415

Reference: CSA - 162 441
528-24-0850
081107-06

Gentlemen:

On January 5, 1970, and again on August 25, 1972, I requested information regarding the determination of my retirement annuity (copies attached).

To date, I have received no direct reply, but I have been informally advised by the former Director of Personnel, Trust Territory of the Pacific Islands, that I was penalized for time lost due to a technical break in service resulting from DPWO-14 ND action.

I reviewed this matter with Capt. Norman M. Martinsen who was OICC at the time I was transferred from the 8th ND to the 14th ND. A copy of his report to the Commission is attached.

I again request:

1. Copy of the acccounting by which

my retirement annuity was determined.

2. A statement as to whether I have been denied service credit due to the action outlined in Capt. Martinsen's letter (copy attached).

Very truly yours,
Howard W. Waite

APPENDIX "S"

Box 144
Inverness, CA 94937
May 28, 1974

United States Civil Service Commission
Bureau of Retirement, Insurance, and
Occupational Health
Washington, D. C. 20415

Reference: RCZ: NO: 1B
CSA 1 162 441

Attn: Mr. W. L. Schlappi

Dear Mr. Schlappi:

Since my letter to you of January 6, 1974, had not been acknowledged in the January 17, 1974, letter from your section, I thought further comments were forthcoming.

This letter is therefore to specifically call attention to the disparity between the total creditable service of 17 years and 2 months shown on the January 17, 1974, computation sheet and the facts, as explained by the letter from Norman M. Martinsen attached to my letter of January 6, 1974. (Additional copy attached herewith.) In his letter, Capt. Martinsen points out that as the then Officer-in-Charge of the 14th Naval District Public Works Office, I was to be

"placed on the DPWO-14ND rolls to maintain his (Howard W. Waite's) Civil Service employment tenure while on loan in Samoa as the then Samoan Government did not come under U. S. Civil Service employment regulation".

I entered U. S. Government employment on May 23, 1947, and was continuously in that status until April 17, 1969. At no time during that 21 plus year period did I have any other employment or income from any other source. Anything contrary to that status was either for the convenience of, or because of administrative errors by the Government. Such machinations ccaused me enough trouble at the time. Must I now be perpetually penalized for the Government's errors? When is the "merit" of the Merit System manifested?

With the 11 months of credited military time, my total creditable service should be 22 years and 9 months, not counting over 1400 hours of sicck leave and over 4000 hours of compensatory time acccumulated over thoše years for whicch I received nothing.

Very truly yours,
Howard W. Waite

Enclosure

APPENDIX "T"

June 11, 1974

Howard W. Waite
Box 144
Inverness, CA 93947

Dear Mr. Waite:

I have your letter of May 28.

We have again reviewed your file and find that based upon the facts in your case, you have been allowed the maximum benefit permissible under existing retirement law.

While you allege in excess of 21 years of service, your certified retirement records indicate creditable service totalling 17 years, 2 months, and 21 days as follows:

From	To	Years	Months	Days
2-17-31	2-4-32		11	18
3-1-50	7-7-50		4	7
9-17-50	7-15-63	12	9	29
3-22-65	4-18-68	3		27
		17	2	21

We are without authority to allow retirement credit for the additional service you claim because such service was not Federal and is not available for credit under the Civil Service Retirement System.

Sincerely yours,
For Chief of Section

APPENDIX "U"

March 19, 1975

Mr. Howard W. Waite
Box 144
Inverness, CA 94937

Dear Mr. Waite:

I have your inquiry of March 5.

The decision that the affidavits you submitted do not specifically show that you were a Federal employee from May 23, 1947, to Febraury 28, 1950, was made by the examiner who evaluated the evidence, and the decision was approved and upheld by Mr. W. L. Schlappi, Chief, Post Adjudication Section (L-Z).

Sincerely yours,

For Chief of Section

APPENDIX "V"

Box 144
Inverness, CA 94937
March 5, 1975

United States Civil Service Commission
Bureau of Retirement, Insurance, and
Occupational Health
Washington, D. C. 20415

Reference: CSA 1 162 441

Attn: Mr. Whitehead

Dear Mr. Whitehead:

Your February 20, 1975, reply to my letter of January 15, 1975, (requesting an answer to a question first raised on November 16, 1972) indicates you may have overlooked the basis for my question.

On April 18, 1971, I appealed the January 15, 1971, denial of my request to reopen my case. On March 16, 1972, the Chief of Section advised me, "I order to give further consideration to your request ... (you must)... submit three statements in affidavit form attesting to the fact that you were a federal employee during the period in question". These affidavits were submitted on March 21, 1972.

On April 5, 1972, the Chief of

Section requested that one of the statements have notary certification (The other two were already notarized.) This request was filled by my letter of May 3, 1972.

A letter from the Chief of Section dated October 18, 1972, states, "The affidavits . . . do not specifically show that you were appointed or employed by a Federal officer in his official capacity as such and were under the supervision and direction of a Federal officer. . ."

On November 16, 1972, I asked whether the decision that the affidavits "donot specifically show . . . proper appointment and supervision was made by the Chief of Section or by the Civil Service Commission. This is the question which has not yet been answered.

To set forth the question clearly:

Who specifically assumes the authority to claim that the swown statements submitted by my letter of March , 1972, and pursuant to the Chief of Section letter to me of March 16, 1972, do not specifically show that I was appointed or employed by a Federal Officer in his official capacity as such

and was under the supervision and direction of a Federal Officer during the period May 23, 1947, to February 28, 1950?

Very truly yours,

Howard W. Waite

APPENDIX "W"

December 22, 1976

Mr. Howard W. Waite
Box 144
Inverness, CA 94937

Dear Mr. Waite:

This is in reply to your letter of September 7, 1976, regarding documentation of Contract-Plus-a-Fixed-Fee service.

Service performed while on a contractor's Cost-Plus-a-Fixed-Fee payroll has been ruled to be creditable for retirement purposes if it is shown that the individual received a Federal appointment and was placed on the contractor's payroll for the convenience of the Government. Since many of the contracts between the contractor and the agency have been destroyed, secondary evidence may be considered in establishing credit for such service.

There is no prescribed wording required for the affidavits regarding such service. However, at least one of the affidavits must be signed by the Resident Officer in Charge; Area Office in Charge of Construction; or other Federal Officer

having knowledge that the individual was Federaly appointed. A contractor's statement that during the period of employment the claimant was an employee of the Navy or Army and not an employee of the contractor is also admissible evidence.

The primary consideration in evaluating such secondary evidence is whether or not it fully and completely documents the case in regard to establishing the necessary elements of employment; i. e. if the evidence conclusively shows the period of employment and that the service met the three tests of Federal employment, as outlined in your letter.

Sincerely yours,

Aurel V. Cissel
For Chief of
Section

APPENDIX "X"

April 3, 1978

Mr. Howard W. Waite
Box 144
Inverness, CA 94937

Dear Mr. Waite:

This is in further reply to Congressman John L. Burton's letter of December 16, 1977, in your behalf. I regret the delay in writing to you.

Congressman Burton has questioned why the recently submitted statement from Mr. George Keller, formerly a principal of one of the contracts under which you were employed during the period from May 23, 1947, to March 1, 1950, "is not germane in establishing Mr. Waite as a government employee during the time in question".

There is apparently some misunderstanding about the letter which Ms. Aurel V. Cisel wrote to you on December 22, 1976. That letter outlined procedures for submitting affidavits as secondary evidence in order to establish credit for Federal service. The letter was not an invitation for you to submit secondary evidence for our consideration,

however, but was in direct response to your written request of September 9, 1976, in which you specifically asked how such affidavits were to be prepared. The second paragraph of Ms. Cissel's letter points out that credit may be allowed for retirement purposes if it is shown that the individual received a Federal appointment and was placed on the contractor's payroll for the convenience of the Government. It went on to say since many of the contracts between the contractor and the agency have been destroyed, secndary evidence may be considered in establishing credit for such service.

The need for secondary evidence has never existed or been in question in your case. Instead, primary evidence (copies of Contracts NOy 13931 and NOy 13636) has been a part of your case file since 1958 and formed the basis of the Commission's original denial letter dated February 26, 1958. This denial of credit has been consistently reaffirmed.

Full consideration of the above-mentioned contracts, as primary evidence for verification of the Federal

nature of your employment, was taken by the Commission's Board of Appeals and Review, based on your appeal to that body, and resulted in their decision of July 22, 1970. The Board determined that:

"The only documentation of the appellant's employment consists of the contracts of employment he entered into with the private contractors. The apellant's representations and the statements furnished on his behalf indicate that a federal officer authorized the contractor to employ the appellant to fill a particular position. 'Authorization' does not satisfy the requirement that a person be appointed. The Board finds as did the Bureau of Retirement, Insurance, and Occupational Health that the evidence does not establish that the Department of Navy appointed the appellant and then assigned him to the payrolls of the contractor for the convenience of the government during the period in question".

Based on the request contained in your letter of September 4, 1970, a review of your case was performed by Mr. Robert B. Bates, Assistant to the Commissioners (Appeals). In the review, consideration was given to the statements of J. W. Gordanier, Captain, CEC, United States Navy, dated February 13 and June 30,

1970. However, as Mr. Bates explained in his January 15, 1971, letter, these statements were not considered to represent new material evidence, not previously available, that your employment from May 23, 1947, to February 28, 1950, (with Brown-Pacific-Maxon, and with Blanchard and Maher, Frederick R. Harris, Inc., and Keller and Gannon) constituted Federal employment. In view of this, and in the absence of any new evidence to indicate probable error in the previous decision of the Board of Appeals and Review, the request for reopening of your case was denied.

The statement of Mr. George Keller dated March 14, 1977, likewise, does not serve to overcome the primary evidence documented in your claim file (copies of Contracts NOy 13931 and NOy 13636). Therefore, you were advised on May 26, 1977, that it did not add anything that had not already been fully considered.

I am sorry that the facts in your case do not permit a favorable reply.

Sincerely yours,
Thomas A. Tinsley,Director

cc Honorable John L. Burton
House of Representatives

APPENDIX "Y"

October 30, 1978

Mr. Howard W. Waite
Box 144
Inverness, CA 94937

Dear Mr. Waite:

This is in reply to your letters of April 12 and September 15, 1978, in which you question the Commission's denial of civil service retirement credit for your employment with Brown-Pacific-Maxon and with Blanchard & Maher/Frederic R. Harris, Inc./Keller & Gannon, under Contracts NOy-13931 and NOy-13626.

On June 8, 1978, we sent you copies of the "Contract of Employment" executed by you under each of the contracts involved. You will notice that in the employment cntracts, you are referred to as the "employee" and the individual contractors are referred to as the "employer". We find nothing in these documents which would indicate that you were an employee of the Department of the Navy, or that you were to accrue any benefits from the U. S. Government based on that service.

Regarding the statement in the last paragraph of your April 12 letter, it should be noted that "documentation" means the supplying of written or printed papers bearing the original, official, or legal form of something, which can be used to furnish decisive evidence or information. The use of the words "the only documentation" in the Appeals Review Board's July 22, 1970, decision referred to the copies of your employment contracts executed many years ago (1947). These documents constitute primary evidence of your employment. The affidavits and letters which you have sent to us since your retirement in 1970 are "secondary" evidence, and cannot overcome the "primary" evidence (the 1947 contracts) contained in your file.

Sincerely yours,

Craig B. Pettibone,
Chief Office of Policy
Development and
Technical Services

APPENDIX "Z"

August 8, 1979

Mr. Howard W. Waite
Box 144
Inverness, CA 94937

Dear Mr. Waite:

This is in reply to your letters of November 7, 1978, and May 10, 1979, regarding disallowance of civil service retirement credit for service you performed for private contractors between May 23, 1947, and February 28, 1950.

There is no prescribed wording or exact text to be used in an affidavit which is submitted as secondary evidence for consideration of whether or not an individual received a federal appointment and subsequently was placed on a contractor's payroll for the convenience of the Government. However, the contents of the affidavit must establish, to the satisfaction of the Office of Personnel Management (formerly the Civil Service Commission), that the necessary elements existed to prove that the individual was a federal employee. The person executing the affidavit is required to describe in detail how he or she had personal

knowledge of the conditions under which the alleged employment was performed, the exact beginning and ending dates of the employment, and the reasons why they believe the employment met the three tests of federal employment, i. e., appointed in the civil service by a federal officer or employee acting in his official capacity, engaged in the performance of a federal function under authority of law of an Executive act, and subject to the supervision of a federal officer or employee while engaged in the performance of the duties of the position. (5 U.S.C. 2105(a)).

The Board of Appeals and Review affirmed the disallowance of service credit in your case on July 22, 1970, and Mr. Robert B. Bates, Assistant to the Commissioners (Appeals), denied your request to reopen and reconsider the case on January 15, 1971. As to the significance of Mr. Schlappi's March 16, 1972, letter to you, this letter was prepared at the same time we were reviewing several similar cases to be sure that the criteria for establishing secondary evidence were uniformly

applied. No affidavits were received from you, however, either in response to the 1972 letter or at any subsequent time, which contained new or material evidence to form a basis for reopening and reconsidering your claim.

Sincerely yours,

Craig B. Pettibone,
Chief Officer of
Policy Development
and Technical Services